

LABOUR DEPARTMENT

The 10th March, 1995

No. 14/13/87-6Lab./339.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala in respect of the dispute between the workman and the management of The Veterinary Surgeon, Incharge of Jerry Cross Breeding Centre, Bye Pass (Near Jagadhri Bus Stand), Jagadhri *versus* Subhash Chander.

IN THE COURT OF SHRI S. R. BANSAL (ADDL. DISTT. & SESSIONS JUDGE),
PRESIDING OFFICER, LABOUR COURT, AMBALA.

Reference No. 339 of 1989.

SHRI SUBHASH CHANDER THROUGH PT. MADHU SUDAN KAUSHISH,
LATHMARAN STREET, JAGADHRI.

.. Workman.

THE VETERINARY SURGEON, INCHARGE OF JERRSY CROSS BREEDING
CENTRE, BYE PASS (NEAR JAGADHRI BUS STAND), JAGADHRI.

*.. Management.**Present :*

MR. Shri Madhu Sedan Saran.

MR. Shri Raghbir Singh, ADA.

AWARD

In exercise of the powers conferred by clause (c) of sub-section 1 of section 10 of the Industrial Disputes Act, 1947 (for short called the Act), the Governor of Haryana referred the following disputes between the workman Shri Subhash Chander and the management. The veterinary Surgeon Incharge of Jerry Cross Breeding Centre, Bye pass, Near Jagadhri Bus Stand, Jagadhri to this court for adjudication,—*vide* Haryana Government notification bearing No. 38936-40, dated 11th September, 1989:

“Whether the termination of services of Shri Subhash Chander is valid and justified? If not, so, to what relief is he entitled?

The workman served a demand notice, dated 20th July, 1989 under section 2-A of the Act. The conciliation proceedings were taken up by the Labour Officer-cum-Conciliation Officer. The same having failed the appropriate government made the above mentioned reference to this court.

On receipt of the reference notices were issued to the workman as well as to the management. The workman appeared and submitted his statement of claim dated 21st November, 1989. It was pleaded that the workman served the management as Bull Attendant from 1st August, 1988 to 30th June, 1989 when his services were abruptly terminated without giving him prior notice or payment of retrenchment compensation. He demanded his reinstatement with continuity of service and back wages.

The management in the written statement filed pleaded that the workman was engaged as daily paid worker for period of 89 days,—*vide* order, dated 29th July, 1989 and thereafter he was allowed extensions upto 31st January, 1989. He worked as under:—

1.	August, 88	25 days
2.	September, 88.	26 days
3.	October, 88	25 days
4.	November, 88	26 days
5.	December, 88	27 days
6.	January, 89	26 days

It is alleged that the workman did not turn up for duty for the whole of month of February, 1989. As some work of JCB, Jagadhri was still to be done. He was engaged further and worked as under:—

1.	March, 89	26 days
2.	April, 89	16 days
3.	May, 89	27 days
4.	June, 89	4 days

Thus according to the management in all the workman worked for total period of 228 days. It is alleged that he remained present on 5th June, 1989. With his absence on 4th June, 1989. Thereafter he wilfully absented himself from duty without any information and his services were never terminated.

Now there is no work left for the DPL and as such his services were no longer required. It was also alleged that the payment of wages for May and June, 1989 is lying with Semen Bank Officer, Jersey Cross Breeding Station, Jagadhri and the workman has not turned upto receive the same.

The workman submitted replication dated 20th February, 1990 controverting the allegations of the management in the written statement filed and reiterating those made in the claim statement. On the pleadings of the parties the following points in issues were laid down for decision,— vide order dated 20th February, 1990:—

1. Whether the impuned termination of services of the workman is in valid? MOPW

Relief.

Parties led evidence I have heard the representatives of the parties. My issuewise findings are as under:—

Issue No. 1.

Shri Subhash Chander, workman appeared as WW-1 and stated that he worked as Bull Attendant with the management for a total period of 310 days. He also stated that at the time of termination of his services no prior notice was given nor any retrenchment compensation was paid. He also stated that new person was recruited in his place and lastly stated that he is unemployed after the termination. During cross-examination he admitted that he joined the management in August, 1988 but denied a suggestion that he remained duty till January, 1989 and thereafter remained absent for two months. On the other hand the management produced Shri K. L. Kumar, Semen Bank Officer, Jagadhri who stated that the workman joined as daily rated worker on 1st August, 1988 and worked with the management upto 31st January, 1989 for total period of 155 days. He also stated that the workman remained absent for whole of month of February, 1989 and worked for 25 days in March and for 16 days in April, 27 days in May, and for 4 days in June, 1989. He also stated that the workman absented from duty for 5th June, 1989 and never turned up thereafter. He stated that the services of the workman were never terminated. He also stated that the workman worked only a period of 228 days. He lastly stated that the management does not come within the definition of industry because it is a public utility office and is non-commercial. During cross-examination he denied a suggestion that the workman worked during February, 1989. He also stated that the sanction regarding the appointment of workman was valid upto 30th June, 1989. MW-2 Shri Priti Pal Kumar, Veterinary Surgeon, Jersey Cross Breeding Centre, Jagadhri after giving the details of the number of working days stated that in all the workman worked for 228 days and absented for duty on 5th June, 1989. He produced Ex. M-1 to M-11 copies of the attendance register to substantiate the claim of the management. The perusal of these documents shows that the workman did not work at all during the month of February, 89 and worked upto 5th June, 1989. This witness also produced Ex. M-12 copy of the appointment letter dated 26th July, 1988. He stated that the sanction for the appointment of the workman was valid upto 30th June, 1989 but the workman voluntarily left his job after 5th June, 1989. Ex. M-13 is the sanction issued by the competent authority and Ex. M-14 is the sanction of the competent authority upto 31st March, 1989. During cross-examination he stated that no notice of absence was given to the workman during February, 1989. There was no legal requirement for serving a notice on the workman as he had not completed 240 days of service continuously. MW-3 Om Parkash produced attendance register of the workman relating to February, 1989 Ex. MW-3/1 to MW-3/4. These documents also contains photo copies of the pay receipts. This witness also stated that the workman himself left the job on 5th June, 1989. He also stated that the workman did not present during whole of the month of February, 1989.

From the above mentioned documentary evidence it is obvious that the workman did not render 240 days of continuous service in a period preceding 12 months of his termination. His services were never terminated. He himself left the job. He was therefore not entitled to any prior notice nor any retrenchment compensation was required to be paid to him. The finding on this issue is, therefore, returned against the workman and in favour of the management.

Relief:

In the end, it is held that the workman is not entitled to any relief.

The reference shall stand answered accordingly.

S. R. BANSAL,

The 13th January, 1995.

Addl. Distt. & Sessions Judge,
Presiding Officer, Labour Court,
Ambala.

Camp at Panchkula.

Endorsement No. 107, dated the 25th January, 1995.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government of Haryana Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

S. R. BANSAL,

Addl. Distt. & Sessions Judge,
Presiding Officer Labour Court,
Ambala.
Camp at Panchkula.

The 24th March, 1995

No. 14/13/87-6Lab./411.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in respect of the dispute between the workman and the management of Director, Central State Farm, Hisar *versus* Phoop Singh.

BEFORE SHRI B.R. VOHRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISAR.

Reference No. 325 of 90

Date of receipt : 20-3-90

Date of decision : 2-3-95

SHRI BHOOP SINGH, S/O NEKI RAM, VPO THASKA, DISTRICT HISAR .. *Applicant*

versus

DIRECTOR, CENTRAL STATE FARM, HISAR .. *Respondent-Management*

Present :

Shri Darshan Singh, for the workman.

Shri O.P. Jain, for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act'), the Governor of Haryana referred the following dispute between Bhoop Singh and the above mentioned management for adjudication to this court —*vide* Labour Department letter No. Hsr/7-90/9866-71, dated 7th March, 1990 :—

Whether services of Shri Bhoop Singh were terminated or he left the job by absenting himself ?
In other event, to what relief is he entitled ?

2. According to Bhoop Singh, he was appointed as Beldar by the management in the year 1975 and he worked as such upto 20th May, 1989. It is further stated by the workman that on 20th May, 1989, when he was returning home after attending to his duties, he was picked up by the officials of the management in a jeep and he was taken to Police Station, Sadar, Hissar, where on the basis of a false report, he was arrested under Section 107/151 of Cr. P.C. After he was bailed out in that case, he received two letters from the management and he also presented himself in the farm of the management on 20th June, 1989 and met Shri Ram Parvesh for allowing him to join duty, but he was not allowed to do so. The workman stated that he was not served with any termination order and was not allowed to join duties since 21st May, 1989. The workman, therefore, pleaded that this action of the management was violative of Section 25-F of the Act. He raised demand notice on 26th October, 1989 and prayed for reinstatement with full back wages and other consequential benefits.

3. The management, in its written statement, stated that the applicant was engaged as daily paid labour. According to the management, on 20th May, 1989, the workman tried to inflict a lathi blow to the jeep driver and the matter was reported to the police and the workman was apprehended under Section 107/151 Cr. P.C. The management further pleaded that despite registered notice dated 6th June, 1989 sent to the workman, he absented himself from duty intentionally and on account of his continuous absence from duty the management had no alternative, but to discharge him. The management, therefore, pleaded that the provisions of the Act were not applicable in this case.

4. On the above pleadings of the parties, the following issues were framed by my learned predecessor on 11th April, 1991 :—

- (1) As per terms of reference.
- (2) Whether the petitioner left the job himself ?
3. Relief.

5. The parties led evidence in support of their rival claims. I have heard Shri Darshan Singh, A.R. of the workman and Shri O.P. Jain, A.R. of the management and have gone through the case file. My findings on the above issues are as under :—

ISSUE NO. 1 & 2:

6. Both these issues are interconnected and as such, are being taken up together for purposes of facility.

7. When the written statement filed by the management is read in conjunction with the pleas raised in the claim statement, it would be seen that the management had not disputed that the workman was appointed initially in the year 1975. The main defence of the management is that after his apprehension by the police in a case under Section 107/151 Cr.P.C. the workman did not report for duty despite registered notice dated 6th June, 1989 sent to him and the workman was discharged on account of his continuous absence from duty.

8. The workman had not entered the witness box in this case, while the management had examined four witnesses. R.C. Misra, MW-2 in his cross-examination had not denied that the workman had submitted an application,—*vide* Ex. W-2 for taking him on duty and likewise Ram Parvesh, MW-4 has also failed to deny that the workman had sent reply to the notice dated 6th June, 1989 (Ex. W-3). He has also shown ignorance about the reply marked 'A'.

9. The management has adduced in evidence the postal receipt Ex. M-4,—*vide* which notice Ex. M-3 was sent to the workman. A perusal of the file would show that there are two notices, both dated 6th June, 1989, one Ex. M-3 and the other Ex. W-3, sent by the management to Bhoop Singh workman, and a copy of the demand notice dated 26th October, 1989 would show that the recipient of both these notices is admitted by the workman. The case of the workman is that he sent reply to both these notices and the copies thereof are Ex. W-2 and mark A respectively. The notice Ex. M-3 is more important, because through this notice, the workman was asked to report for duty, failing which, he was informed that he would be deemed to have abandoned and the reply sent by the workman to this notice is Ex. W-2. As already stated above, R.C. Misra, MW-2 has shown ignorance about the receipt of this reply Ex. W-2.

10. From above, it would be manifest that the contention of the workman, right from the beginning was that he reported for duty, but was not allowed to join and that he sent registered notice in this regard, a copy of which was Ex. W-2. The reply was sent by the workman on 21st June, 1989 and the present demand notice was issued by him on 26th October, 1989. From these circumstances, it can not be said that the workman had left the job himself. Admittedly no enquiry was conducted by the management before terminating the services of the workman, nor the workman was served with a charge-sheet. Even provisions of Section 25-F of the Act were admittedly not complied with.

The action of the management in preventing the workman from attending to his duties, is clearly contrary to the principles of natural justice. It is settled law that when the employer had treated the workman to have absented from duty, it was simply not open to it to have brought an end to the relationship of "master and servant" without holding an enquiry in the matter and without recording a finding of guilty *qua* the workman. In this connection I find support this conclusion from the decision of Hon'ble Supreme Court reported as *L. ROBERT D'SOUZA versus EXECUTIVE ENGINEER SOUTHERN RAILWAY*, AIR, 1982-SC-853. In that case, their Lordships of the Supreme Court had examined an almost identical case involving termination of service of the workman on the ground of absence without leave. The Supreme Court declared that absence without leave constitutes misconduct and it is not open to the employer to terminate the services without notice and enquiry or at any rate without complying with the minimum principles of natural justice. Same view has been taken by the Supreme Court in a recent decision in *Shri D.K. YADAV versus M/s. M. A. INDUSTRIES LTD.* 1993(4)SLR-126.

11. Another latest Division Bench authority on this point is reported as *SARASWATI INDUSTRIAL SYNDICATE LIMITED versus JAI BHAGWAN JAIN & ANOTHER*, 1994(3) RSJ-250.

12. As a result of above discussion, I hold that the termination of services of the workman is illegal and that the workman had not left the job himself. He is, therefore, entitled to reinstatement, with full back wages and other consequential benefits. Both these issues are, therefore, decided accordingly, in favour of the workman.

ISSUE NO. 3.—RELIEF:

13. In view of my findings on the above issues, the termination of services of the petitioner is held as illegal. The same is hereby set-aside. The petitioner is reinstated in the same post forthwith, with full back wages and benefit of continuity of service and other consequential benefits. The reference is answered accordingly, with no order as to costs.

The 2nd March, 1995.

B. R. VOHRA,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Hisar.

Endst. No. 301, dated 6th March, 1995.

A copy, with two spare copies, is forwarded to the Financial Commissioner and Secretary to Government, Haryana, Labour & Employment Department, Chandigarh for necessary action.

B. R. VOHRA,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Hisar.

No. 14/13/87-6Lab./416.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in respect of the dispute between the workman and the management of The Transport Commissioner, Haryana and others *versus* Satbir Singh:—

BEFORE SHRI B.R. VOHRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISAR.

Reference No. 821 of 90

Date of receipt:	25.9.90
Date of decision:	2-3-95

SHRI SATBIR SINGH, S/O NEKI RAM, VPO MAYYAR, TEH. & DISTRICT HISAR.

... *Applicant*

versus

1. TRANSPORT COMMISSIONER, HARYANA, CHANDIGARH.

2. GENERAL MANAGER, HARYANA ROADWARYS, SIRSA ... *Respondent-Management*

Present:

Shri L. S. Bajia, for the workman.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act') the Governor of Haryana referred the following dispute between Satbir Singh and the above mentioned management for adjudication to this Court,—*vide* Labour Department letter No. Hsr/199-90/38033-39, dated 14th September, 1990:—

Whether termination of services of Satbir Singh is justified and in order ? If not, to what relief is he entitled ?

2. The workman was appointed as Conductor in Haryana Roadways, Sirsa in the year 1979. On the allegation that he had embezzled a sum of Rs. 50 by not issuing tickets to the passengers on 2nd July, 1985, the workman was served with a charge-sheet. It was followed by appointment of Enquiry Officer, but according to the workman, no enquiry was conducted and he was illegally removed from service,—*vide* order dated 15th July, 1986. Accordingly to the workman, when the enquiry was fixed for 23rd April, 1986 for recording evidence of the management, no witness turned up, but the Enquiry Officer procured the signatures of the workman on a blank paper under threat of dismissal from service and that signature was used subsequently for fabricating his confession. It was, therefore, stated that the enquiry held in this case was not just and proper and that the termination order was also bad in law. The workman, therefore, prayed for reinstatement with full back wages and other consequential benefits.

3. The management, in its written statement, contended that during the course of departmental enquiry, the workman himself gave in writing that he did not want the enquiry to proceed and that he would accept the penalty inflicted upon him by the department. On the basis of this, enquiry proceedings were stopped and the termination order was passed accordingly. It was therefore, stated that there had been no violation of provisions of the Act.

4. On the above pleadings of the parties, the following issues were framed by my learned predecessor on 3rd September, 1991:—

- (1) As per terms of reference.
- (2) Whether the claim is bad for mis-joinder and non-joinder of necessary parties?
- (3) Whether the workman requested the management not to hold enquiry and admitted his guilt ? If so, to what effect?
- (4) Relief.

5. The parties led evidence in support of their rival claims. I have heard Shri L.S. Bajia, A.R. of the workman and Shri R.K. Bawa, ADA of the management and have gone through the case file. My findings on the above issues are as under :—

Issues Nos. 1 & 3

6. Both these issues are inter-connected and as such, are taken up together for purposes of facility.

7. It is admitted by the workman that he had received the charge-sheet, dated 4th September, 1985 a copy of which is Ex.M-6. The workman also submitted reply to the charge-sheet, copy of which is Ex.M-8 and in this reply, the workman did not admit any of the charges levelled against him. Admittedly, domestic enquiry was ordered in this case and Shri Dharam Chand Pawar, the then Superintendent, was appointed as Enquiry Officer in this case. Dharam Chand, Enquiry Officer was examined as MW-1 by the management and he stated that on 15th May, 1986, the workman gave writing Ex. M-2 before him, whereby he did not want enquiry to proceed and offered to accept penalty awarded to him. According to Shri Pawar, MW-1 he thereafter, submitted his report, Ex. M-3, Shri Pawar, however, admitted in his cross-examination that in Ex.M-2, the workman had no where admitted his guilt; nor had he admitted therein that the report of the Flying Squad was correct.

8. A perusal of the enquiry report Ex.M-3, which culminated in the passing of removal order, would show that the Enquiry Officer had found the workman guilty on the basis on his so called admission, contained in Ex.M-2 and that he had not recorded any evidence. When the letter Ex.M-2 is perused carefully, it would be seen that the workman had not admitted his guilt and he only stated that he did not want the enquiry to continue, unless the workman had admitted the guilt in unequivocal

terms, the Enquiry Officer was duty bound to complete the enquiry before holding him guilty. Admittedly, this was not done by the Enquiry Officer and as such, the removal order, which is based on the enquiry report, it is to be held to be bad. The authority of R.A. Prasad *versus* Union of India 1991(4) SLR-421(CAT New Delhi) cited by Shri R.K. Bawa, ADA of the management during arguments, is distinguishable, because in this case, the workman had admitted his guilt during departmental enquiry.

9. In the light of discussion above, I hold that the termination of services of the workman was illegal and that the workman had not admitted his guilt before the Enquiry Officer. The workman is, therefore, entitled to reinstatement. As regards back wages, it would be seen that he raised demand notice only on 12th July, 1990, though his removal order was passed on 15th July, 1986 and his appeal was rejected by Transport Commissioner on 8th December, 1987. He has not furnished any explanation for this long silence, I, therefore, hold that he would be entitled to back wages only from 12th July, 1990 when he raised demand notice and he will not be entitled to any back wages from the date of removal, till 11th July, 1990. Both these issues are decided in favour of the workman.

Issue No. 2

10. This issue was not pressed by the A. R. of the management and was conceded to by him during arguments. This issue is, thus answered against the management.

Issue No. 4—Relief

11. In view of my findings on the above issues, the termination of services of the petitioner is held as illegal. The same is hereby set aside. The petitioner is reinstated in the same post forthwith with benefit of continuity of service and other consequential benefits. The petitioner shall not be entitled to any back wages from 15th July, 1986 to 11th July, 1990. He will, however, be entitled to full back wages from 12th July, 1990 onwards. The reference is answered accordingly, with no order as to costs.

(Sd.) . . .

The 2nd March, 1995

Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Hisar

Endorsement No.

dated:

A copy, with two spare copies, is forwarded to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments Chandigarh for necessary action.

(Sd.) . . .

Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Hisar.

No. 14/13/87-6Lab./428.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of Maharsi Daya Nand University, Rohtak *versus* Shri Om Parkash.

IN THE COURT OF SHRI P. L. KHANDUJA, PRESIDING OFFICER, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, ROHTAK

Reference No. 684 of 1992

between

SHRI OM PARKASH, SON OF SHRI DHARAM SINGH, V. P. O. BUTANA, DISTRICT SONEPAT,
. . . Workman.

And

THE MANAGEMENT OF MAHARISHI DAYANAND UNIVERSITY, ROHTAK

Present:

Shri S. K. Nehru, Authorised Representative for the workman.

Shri M. C. Bhardwaj, Authorised Representative for the management.

AWARD

In exercise of the powers conferred by sub-clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 the Governor of Haryana has referred the following dispute between the parties, named above to this Court for adjudication,—*vide* Labour Department Endorsement No. SOV/Roh/108—92/26630—35, dated the 13th June, 1992 :—

Whether the termination of services of Shri Om Parkash is justified and in order ? If not, to what relief he is entitled ?

2. The workman and the management were summoned. The workman appeared and filed the claim statement that he was working with the employer since 28th November, 1990 as a Library Attendant in University Library, M. D. U., Rohtak on the basic pay of Rs. 950 and has not given any chance of any complaint during his tenure of period of service. But the management terminated the services of the workman on 28th November, 1991 without assigning any reason or reasonable cause. Therefore, the above termination is absolutely illegal, unwarranted and against the principle of natural justice. The workman was appointed on a permanent post and was permanent hand and, thus, entitled to be heard before giving any sort of punishment to him. At the time of termination no notice was given to the workman and no enquiry was held by the management and no notice was sent to the Government on the prescribed form and no notice was given to the workman and nor the workman was paid retrenchment compensation. In this way the management have contravened Section 25-F of the Industrial Disputes Act. Some junior persons are also working in the office of the management and the management have contravened the Section 25-G and H of the Industrial Disputes Act. The management has not adopted the procedure of first 'come and last go'. The workman requested many times regarding his illegal termination but all in vain and futile. Hence this claim statement was filed that he be reinstated with continuity of service alongwith other standing benefits.

3. The management appeared and filed the written statement that the University is a statutory body and governed by its statutes and Regulations. There is no violation of the service rules in the matter of the applicant. The applicant was appointed on *ad hoc* basis for a fixed tenure stipulated in the contract of employment. The termination of service is squarely covered by sub-clause (bb) of Clause 2 (oo) as provided in Section 2 of the Industrial Disputes Act, 1947. The applicant was appointed as Library Attendant on *ad-hoc* basis against a vacant post for a period of six months or till regular selection which is earlier,—*vide* letter No. EN/6/90/24266, dated the 27th November, 1990. He was given extension on the same terms upto the 28th November, 1991. Due to non renewal of the contract of employment the applicant stood automatically relieved from the job. This is not a case of disciplinary action or retrenchment and therefore, there was no occasion of charge-sheet, notice to Government or compliance of Section 25-F of the Industrial Disputes Act as the applicant was in contractual employment. Hence claim-statement be dismissed with costs.

4. Replication was filed by the workman. On the pleadings of the parties, the following issues were framed :—

- (1) Whether the termination is covered by sub-clause (bb) of Section 2 (oo) of the Industrial Disputes Act ?
- (2) As per terms of reference ?
- (3) Relief.

5. My findings on the above issues with reasons thereof are as under :—

Issue No. 1 & 2 :

6. Both these issues are being taken up together for decision together as both these issues involve the same question of facts of law.

7. The workman has come into witness box as WW-1 and closed his evidence. Shri Bal Kishan Sharma, Clerk of the respondent has come into witness box as MW-1 and closed the evidence.

8. Ex. M-1 is the photostat copy of the application of Om Parkash to Vice Chancellor of M.D.U. for the post of peon-class IV post. Ex. M-2 is photostat copy of the appointment letter of workman. Para No. 3 of the order passed is only relevant and which is to the effect that the appointment of workman on purely on *ad hoc* basis for a period of six months in the first instance or till regular selection is made, whichever is earlier. However, it can be terminated at any time without any notice.—Ex. M-4 is the order passed by the Superintendent (Estt) for Registrar giving extension to the workman as Library Attendant

for the period of six months with break of one day. Ex. M-7 is the order passed by the Superintendent (Estt.) for Register to workman that he shall not be relieved of his duties with effect from 28th November, 1991 (A. N.) as he has given extension. Ex. M-10 is the photostat copy of the order passed by the Superintendent (Estt.) for Registrar giving one month extension of service of workman and the order was passed on 6th January, 1992. Ex. M-8 is photo copy of the office order dated 28th November, 1991, whereby the workman was relieved of his duties with effect from the 28th November, 1991.

9. The learned Authorised Representative for the management Mr. M. C. Bhardwaj made the submission that as the orders to show that the appointment of the workman had taken place for fixed period and thus his case is covered under Section 2 (oo) (bb) of the Industrial Dispute Act and if any worker is contracted for specific period his case is not covered under the Industrial Disputes Act and his termination does not amount to retrenchment as defined in Section 2 (oo) of the Industrial Dispute Act. For this submission reliance was placed on *Sat Pal Singh versus Union of India*, cited in 1990 (7) SLR, 112, holding that the petitioners never pleaded that the work for which they were employed, was continuing or their repeated appointments were mere device to deny them regular or permanent Status. Held that the principle enunciated in the judicial precedents cited not applicable. Does not amount to unfair labour practice. The reliance was also placed on the reference between the Haryana Board of School Education and Industrial Tribunal, Hissar, cited in 1994 LLJ (1), 1123 holding that when the workman was appointed for specified period and his appointment was of contingent nature, it cannot be very remotely suggested that services of such workman were illegally terminated. The facts of cited case law are that services of the workman comes to an end automatically after expiry of specific period. Appointment is of contingent nature.

10. Further it was held in *Jay Bharat Printers versus Labour Court* cited in 1993 (ii) C. I. R. 507 that Industrial Disputes Act, held taking into account the nature of the appointment made in the instant case and the gaps in between it must be held that view taken by the Labour Court that this is not a case coming within the purview of Section 2 (oo) (bb) is reasonable and correct.

11. Now the question arises whether appointment of the workman had taken place for specific period or not. As the workman has made statement that he was appointed class IV post i.e. post of Library Attendant. It is not given in the charge-sheet or the appointment letter that as the workman was appointed on technical job and the workman was appointed for specific period so he was relieved from post automatically when the order was passed by the management relieving from the said job and the workman was not a technical hand. It is not viable to presume that the workman was technical and which was not proved that he was appointed for specific period. Though it is proved that the workman was appointed on three occasions for specific post and as the period came to an end his services came to an end. I am to consider whether the workman was relieved from the job or his case was covered under the Industrial Dispute Act or not.

12. For the facts that the petitioner was employed as class IV employee as Library Attendant, though there is no evidence to the effect as to whether he was posted on some technical post or not but since he was posted class IV post, he is presumed to be working as not technician. Then when his removal was taken to place the management had signed the direction signed by it. The petitioner was appointed time and again, it is proved that he was not appointed for fixed period and this was only diagnostic to show it as if he was appointed for limited period. Thus I am of the view that the reference petition is maintainable, the provision of Section 2 (oo) are applicable but provisions contained in Section 2 (oo) (bb) of Industrial Dispute Act are not applicable. I decide both these issues in favour of the workman and against the management.

Issue No. 3—(Relief) :

13. In view of my findings on the above issues I accept the reference petition and claim statement and I hold that the workman is entitled to be reinstated on the job with continuity of services but with 50% (FIFTY) of back wages. The reference is answered and returned accordingly, however the parties are left to bear their own costs.

P. L. KHANDUJA,

Presiding Officer,
Industrial Tribunal/Labour Court, Rohtak.

Endorsement No. reference 684—92/296, dated the 22nd February, 1995.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Haryana, Ch. udigarh.

P. L. KHANDUJA,

Presiding Officer,
Industrial Tribunal/Labour Court, Rohtak.